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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. —

MARION H. ALLEN, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA, PETITIONER

v.

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of Marion H. Allen, Collector of Internal Revenue for the District of Georgia, substituted by the Circuit Court of Appeals for the Fifth Circuit in the place of W. E. Page, who resigned as such collector during the pendency of this action in the said Circuit Court of Appeals on his appeal, and has since died, prays for a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered December 18, 1937.

OPINIONS BELOW

There are four opinions below. The first is the opinion of the District Court of the United States

for the Northern District of Georgia on the dismissal of the bill of complaint against the former collector, W. E. Page, which is reported in 10 F. Supp. 901; the second, the opinion of the Circuit Court of Appeals for the Fifth Circuit reversing such judgment, which is reported in 81 F. (2d) 577; the third, the opinion of the said District Court on the entry of judgment on remand in favor of the respondent and against the said Page, as such collector, which is reported in 18 F. Supp. 62; and the fourth, the opinion of the said Circuit Court of Appeals rendered December 18, 1937, not yet reported, affirming the last mentioned judgment of the said District Court after the substitution of the incumbent collector, Marion H. Allen, in place of the said Page, after his resignation and decease.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Fifth Circuit was entered December 18, 1937. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the respondent may maintain a suit to enjoin a collector of Internal Revenue from recovering by distraint admissions taxes imposed by Section 500 of the Revenue Act of 1926 as amended by Section 711 of the Revenue Act of 1932, and collected under its authority from purchasers of

tickets of admission to intercollegiate football games.

2. Whether Section 11 of the Act of February 13, 1925 (U. S. C., Title 28, Sec. 780), permits the substitution of the collector's successor in office as defendant and the continuance of the suit against him.

3. Whether the respondent, or its agents, were engaged in the performance of an essential governmental function in staging intercollegiate football games, in which teams representing the University of Georgia and the Georgia School of Technology participated.

4. If question 3 is answered in the affirmative, then whether the federal admissions tax referred to imposes an unconstitutional burden upon the State of Georgia.

STATUTES INVOLVED

The statutes involved are set out in the Appendix, *infra,* pp. 18–23.

STATEMENT

No returns were filed in respect of the tax imposed by Section 500 of the Revenue Act of 1926, as amended by Section 711 (c) of the Revenue Act of 1932 (Appendix, *infra,* pp. 18, 21), on admissions to athletic events held at the University of Georgia and at the Georgia School of Technology during September and October, 1934, the period here in question. Accordingly the then Collector of Internal Revenue for the District of Georgia,

W. E. Page, prepared such returns in the amount of $895.37, admissions tax collected by the University of Georgia Athletic Association on admissions to such events held during that period at the University of Georgia and in the amount of $3,914.63, admissions tax collected by the Georgia Tech Athletic Association on admissions to such events held at the Georgia School of Technology during that time. Neither sum was paid. (R. 329.) The Commissioner of Internal Revenue made assessments against each association in the amount thus returned for it and certified the assessments to the said collector (R. 349–350), who forthwith made demand upon each association for the payment of the amount returned for it, and upon its failure to pay filed a lien, issued a warrant, and caused levy thereof to be made upon the bank account in which the association had deposited and was holding the amount of the tax, so collected and withheld by it, as a special trust for the United States, as required by Section 607 of the Revenue Act of 1934 (Appendix, *infra,* p. 21); and, in addition, the said collector served notice of levy and demand for payment upon each of the banks in which these amounts had thus been deposited. (R. 336–358.)

Thereupon respondent, the Regents of the University System of Georgia (a public corporation entrusted by law with the control and management of these schools) filed its bill of complaint, with a later amendment thereto, against the said Page as

such collector, in the District Court of the United States for the Northern District of Georgia, praying for a judgment declaring that it was immune from the federal admissions tax because it was an agency of the State and was performing an essential governmental function in staging the athletic events in question. It further sought an injunction *pendente lite* against said Page as collector, and against his agents, etc., from proceeding with the collection, and a permanent injunction upon the declaration requested. (R. 1–14; 18–24.) The complaint was, on motion of Page, dismissed for want of equity. (See *Regents of the University System of Georgia* v. *Page,* 10 F. Supp. 901.)

On the Regents' appeal, the judgment of dismissal was reversed by the Circuit Court of Appeals for the Fifth Circuit, Judge Hutcheson dissenting. 81 F. (2d) 577. The decision proceeded upon the premise that the respondent, or its agents, did not voluntarily act as agents for the Federal Government in the collection of the tax; that it was therefore not estopped to assert that the exaction was an infringement of its constitutional exemption from the tax; and that, since it could not maintain an action to recover the tax if paid, because it was not the taxpayer but only the agent of the Government in collection, it was entitled to maintain the bill to restrain collection.

Upon the ensuing trial, the District Court found the facts to be in substance as follows (R. 153–

154): The respondent is a public corporation and instrumentality of the State of Georgia, under whose supervision are its two branches, the University of Georgia and the Georgia School of Technology. At all the times here involved, and prior thereto, there was maintained at each of these schools an athletic association, incorporated under the laws of Georgia, known as the University of Georgia Athletic Association and the Georgia Tech Athletic Association, respectively, which had control, among other things, of intercollegiate contests in football, to which the public was admitted upon the payment of admission charges of varying amounts (R. 150–151). The expenses of physical education and athletic programs at each school were supported in large measure from admission charges to athletic contests; in addition, a small student's fee collected from each student was also used for such purpose, the entire expenses of physical education and athletic programs in each school being met by such admission charges and student fees. During and since the year 1934, each ticket of admission to such athletic events at the University of Georgia contained the following notice (R. 152):

> The University of Georgia, being an instrumentality of the government of the State of Georgia, contends that it is not liable for any admission tax. The amount stated as a tax is so stated because the University is required to do so by Treasury

> regulations pending a decision as to its liability in this respect. This amount is collected by the University as a part of the admission and will be retained as such unless it is finally determined that the University is itself liable for the tax.

The same appeared on all tickets of admission to athletic contests at the Georgia School of Technology except that the name "School of Technology" was inserted in lieu of the name "University of Georgia"[1] (R. 152). Neither the Regents nor the athletic associations, nor any other branch or instrumentality of the respondent, had made any returns to the petitioner for the period in question of the amount stated on the admission tickets as a tax. Each association kept all amounts so collected separate and apart from all other funds and deposited them in a separate bank account, the amount so collected by the University of Georgia Athletic Association ($895.37) being deposited in the Citizens and Southern National Bank in Athens, Georgia, and that collected by the Georgia Tech Athletic Association ($3,914.63) being deposited in the First National Bank in Atlanta,

[1] This was printed on the back of each ticket. (R. 152.) On the face of each there was printed, in accordance with the requirements of Section 500 of the Revenue Act of 1926, as amended (see Appendix, *infra*, p. 18), the admission price, the amount of the Federal tax, and the total amount of the admission price and tax (R. 193–194); see also Plaintiff's Exhibit 4 (R. 289), and Defendant's Exhibits 6–A and 6–B (R. 344, 345).

Georgia. No part of these sums has ever been paid to the said Page as collector or to the United States (R. 150–151); and, upon such failure to make the returns and pay the taxes on said admissions, the said collector made returns and assessments in said amounts against the associations and proceeded to their collection by distraint.

The District Court construed the decision of the Circuit Court of Appeals to hold that the bill of complaint stated a cause of action and that judgment should go for the respondent if the allegations of the bill were established, as he found them to be. (R. 155–156.) The court accordingly entered a final decree restraining Page, his agents, etc., from further proceeding under the levies and warrants aforesaid and cancelling them and the liens thereby created.

The Collector appealed from this decree. During the pendency of the appeal, the defendant Page resigned and, before the argument, died. Over the objection of Government counsel, the court ordered his successor, Marion H. Allen, to be substituted as the appellant in the action. The court then affirmed the judgment, Judge Hutcheson dissenting. The court refused to reconsider the question of the right of the respondent to maintain the suit for injunctive relief. Its decision on the merits is predicated upon the view that the staging of intercollegiate football games is an essential governmental function. Judge Hutcheson premised his dissent upon two propositions: (1) that

the staging of such spectacles is not an essential governmental function, and (2) that, even if it were, the requirement that the athletic associations which conduct the enterprises collect a 10 percent tax on admissions does not impose an unconstitutional burden on the State.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

1. In holding that, despite R. S. 3224, the respondent could maintain a suit to enjoin a Collector of Internal Revenue from recovering by distraint admissions taxes imposed by Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, and collected by it or its agents or instrumentalities from purchasers of tickets of admission to intercollegiate football games.

2. In holding that respondent had standing to contest the validity of the tax.

3. In holding that Section 11 of the Act of February 13, 1925 (U. S. C., Title 28, Sec. 780), authorizes the substitution of the collector's successor in office and the continuance of the suit against him.

4. In holding that the respondent or its agents or instrumentalities were engaged in the performance of an essential governmental function in staging intercollegiate football games in which teams representing the University of Georgia and the Georgia School of Technology participated, and that hence the purchasers of admission tickets were

immune from the tax and it and its agents and instrumentalities not required to pay over to the Government the amounts it or they had collected from such purchasers as tax.

5. In holding that such tax imposed an unconstitutional burden upon the State of Georgia.

6. In reversing the original decree of the District Court of the United States for the Northern District of Georgia dismissing the respondent's bill of complaint for want of equity.

7. In entering its order substituting Marion H. Allen, the incumbent collector, in the place of W. E. Page, the former collector, against whom the suit was instituted, upon his resignation and death during the pendency of the action in the court below on the second appeal.

8. In affirming the decree of the District Court, entered on remand, enjoining the collection of the tax and cancelling the levies, warrants of distraint, and the liens thereby created.

9. In holding that the findings support the decree of the District Court, and that there is evidence to sustain it.

REASONS FOR GRANTING THE WRIT

The present case involves important questions both of jurisdiction and practice and of constitutional law.

I

1. The holding that respondent may maintain a suit to enjoin the collection of the admissions tax

constitutes a novel departure from the rule embodied in R. S. Section 3224, prohibiting suits to restrain the assessment or collection of a federal tax. The premise for this holding, as stated by a majority of the court on the prior appeal (81 F. (2d) 577), was that no suit for refund could be maintained by respondent, as it is not the taxpayer. Two observations may be made with respect to this assumption. First, one who is not the taxpayer, but merely a collecting agency, is entitled to no greater standing in equity to restrain the collection of a tax than at law to seek its refund. Second, if respondent is not the taxpayer, no burden in the constitutional sense is imposed upon it in requiring it to collect and pay over an admissions tax on spectators. See p. 16, *infra*.

The situation is not changed by the notation on the tickets that the amount of the tax is collected as part of the admission charge and will be retained unless it is determined that the University is liable for the tax. (R. 289, 344–345.) If the amount of the tax is in fact part of the admission charge, a larger tax was due and should have been collected on each admission. Cf. *Lash's Products Co.* v. *United States,* 278 U. S. 175. If the University merely attempted to secure from the spectators a relinquishment to it of their right to contest the tax, the attempt may be regarded as the assignment of a claim against the United States, forbidden by R. S. 3477, U. S. C., Title 31, section

203; and if not so forbidden the University would simply be entitled to assert the rights of the spectators in a proceeding appropriate to a claim by them, not in a suit for injunction.

2. Apart from the question of the application of R. S. 3224, there is presented the question whether one who collects a tax as agent of the United States may enjoin a proceeding by the Collector to secure possession for the United States of the amount collected. Indeed, the standing of respondent is even more remote than suggested, since not the respondent, but the two athletic associations, themselves incorporated, collected the tax, deposited it, and were assessed therefor as collecting agents (R. 150–151, 152–153). In these circumstances the respondent cannot be heard to assert ownership in itself as against the United States. Thus in *United States* v. *First Capital Nat. Bank,* 89 F. (2d) 116 (C. C. A. 8th), where the United States sued to recover the amount of admission taxes deposited with a bank by the athletic association of the University of Iowa, and the bank set up the claim of the university to the fund, the court held that since the athletic association collected the tax as agent of the United States with the acquiescence of the university, neither the association nor the university had standing to assert a right in itself to the fund. In the present case the only additional circumstance is the notation on the reverse of the tickets; but, as already observed, that nota-

tion has the effect either of increasing the tax due, or of allowing respondent to prosecute the claim of spectators in an appropriate action. In no event does the notation alter the essential fact that the associations, with the acquiescence of the respondent, collected an amount stated on the tickets to be a tax and hence, under the statute, required to be paid over to the United States. Respondent stands in no better position than the associations. Collecting agents cannot, in an effort to challenge the validity of the tax collected by them, destroy the relation between themselves and the Government by making contracts conferring claims to the fund on another. It is submitted, therefore, that the decision below cannot be reconciled with the decision in the *First Capital Nat. Bank* case, *supra.*

3. A final procedural question is raised by the substitution of the successor collector on appeal, after the resignation and death of his predecessor, the original defendant. The power of a Federal court to authorize such substitution was expressly reserved for decision in *Ex parte La Prade,* 289 U. S. 444, 459, the Court stating: "We have no occasion to decide whether or in what circumstances a successor in office who adopts the attitude of his predecessor and is proceeding or threatening to proceed to enforce the statute may be substituted in a pending suit. That question is not here and is reserved." It is true that there the Court was concerned with the substitution of state officers and pointed out that with respect to Federal officers

Congress "may ordain that they may sue or be sued as representatives of the United States * * *" (p. 458). But nowhere has Congress converted a suit against a collector into one against the United States. The general provision for substitution of Federal officers, found in U. S. C., Title 28, section 780, *infra*, pp. 22–23, does not authorize the substitution of a successor collector for his predecessor in an action for refund. *Union Trust Co.* v. *Wardell*, 258 U. S. 537. There is much less basis for inferring that substitution has been authorized and immunity thereby waived in a suit for injunction, since such a suit against a public officer is traditionally and necessarily regarded as brought against the defendant personally, and since Congress has established through R. S. 3224 a firm rule against enjoining the assessment or collection of a tax. It is submitted, therefore, that the question expressly reserved in the *La Prade* case is presented here, and that the decision of the question by the court below was erroneous.

II

In holding the tax unconstitutional as applied to respondent, the court below has decided a question which is manifestly of general importance. Furthermore, the decision below cannot, we submit, be supported, both because the activity here involved is not an essential governmental function of the State, and because, even if it were, the tax does not lay an unconstitutional burden upon it.

1. That the staging of intercollegiate football games is not an essential governmental function of the State has been amply demonstrated, in our view, in the dissenting opinion of Judge Hutcheson below. It could hardly be supposed that such an activity is one of "those duties which the framers intended each member of the Union would assume in order adequately to function under the form of government guaranteed by the Constitution". *Helvering* v. *Therrell,* No. 128, decided February 28, 1938, p. 4.

A brief résumé of certain salient facts in the present case will bear out the conclusion of Judge Hutcheson that we are here dealing with "gigantic commercial activities." The spectacles involved are staged in two stadiums, each of which has a seating capacity of approximately 30,000 persons (R. 187, 205). The enrollment at the University of Georgia was about 2,400 students, and at the Georgia School of Technology about 2,000 (R. 179, 202). At the University of Georgia there were from 135 to 160 students on the football squad (R. 173) and at the Georgia School of Technology 50 (R. 202). At neither school is participation in football a prerequisite to graduation, and no credit is given therefor toward a degree (R. 164, 171, 172, 202, 227). The receipts of the University of Georgia Athletic Association derived from the sale of football tickets, exclusive of student fees, during the year ended August 31, 1935, were $71,323.27 (R.

268). The receipts of the Georgia Tech Athletic Association derived from football games in the year 1934 were in excess of $127,000 (R. 214, 309), including over $74,000 from sales of tickets (R. 308). It is true that the Athletic Associations have chosen to contribute from their receipts to scholarship and similar funds of the respective schools (R. 182–183, 242), but obviously the disposition which is made of the profits from the activity taxed cannot be determinative of the nature of the activity itself. If the receipts derived by the State of Ohio from the sale of liquor (*Ohio* v. *Helvering,* 292 U. S. 360) had been devoted to paying the salaries of legislators, that fact plainly would not have affected the conclusion of this Court that the activity was not an essential governmental function and could be subjected to tax by the Federal Government.

2. But even if the staging of these contests be deemed an essential governmental function, the tax on admissions thereto does not impose an unconstitutional burden on the State. The tax is laid on the purchasers, not on the athletic associations or the State. The tax is non-discriminatory, being laid generally on admissions to places of amusement. Consequently, even if the tax increased the cost to the State, it would not be invalid. *James* v. *Dravo Contracting Co.,* No. 3, decided December 6, 1937. And in fact the tax cannot be said to be passed on or to increase the cost to the State, as might be true in the case of a tax on the gross receipts of contractors, since it is highly conjectural

to assume that the attendance and receipts at the games are adversely affected by the tax. The effect would seem to be no more direct or substantial than in the case of taxes levied generally upon the citizens of a state.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition should be granted.

ROBERT H. JACKSON,
Solicitor General.

MARCH, 1938.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 500. (b) No tax shall be levied under this title in respect of—

(1) Any admissions all the proceeds of which inure (A) exclusively to the benefit of religious, educational, or charitable institutions, societies, or organizations, societies for the prevention of cruelty to children or animals, or societies or organizations conducted for the sole purpose of maintaining symphony orchestras and receiving substantial support from voluntary contributions, or of improving any city, town, village, or other municipality, or of maintaining a cooperative or community center moving-picture theater—if no part of the net earnings thereof inures to the benefit of any private stockholder or individual; * * *.

* * * * *

(d) The price (exclusive of the tax to be paid by the person paying for admission) at which every admission ticket or card is sold shall be conspicuously and indelibly printed, stamped, or written on the face or back of that part of the ticket which is to be taken up by the management of the theater, opera, or other place of amusement, together with the name of the vendor if sold other than at the ticket office of the theater, opera, or other place of amusement. Whoever sells an admission ticket or card on which the name of the vendor and price is

not so printed, stamped, or written, or at a price in excess of the price so printed, stamped, or written thereon, is guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $100. (U. S. C., Title 26, Secs. 941–944.)

SEC. 502 (a) Every person receiving any payments for such admission, dues or fees shall collect the amount of the tax imposed by section 500 or 501 from the person making such payments. Every club or organization having life members shall collect from such members the amount of the tax imposed by section 501. Such persons shall make monthly returns under oath, in duplicate, and pay the taxes so collected to the collector of the district in which the principal office or place of business is located.

* * * * * *

(c) The returns required under this section shall contain such information, and be made at such times and in such manner, as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

(d) The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum a month from the time when the tax became due until paid. (U. S. C., Title 26, Secs. 955–957.)

SEC. 1102. (a) Every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to

time prescribe. (U. S. C., Title 26, Sec. 960.)

* * * * *

SEC. 1114. * * *

(e) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy. (U. S. C., Title 26, Sec. 1610.)

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 711. ADMISSIONS TAX.

(a) Paragraph (1) of Section 500 (a) of the Revenue Act of 1926, as amended, is amended to read as follows:

"(1) A tax of 1 cent for each 10 cents or fraction thereof of the amount paid for admission to any place, including admission by season ticket or subscription, to be paid by the person paying for such admission; except that in case the amount paid for admission is less than 41 cents, no tax shall be imposed. In the case of persons (except bona fide employees, municipal officers on official business, and children under 12 years

of age) admitted free or at reduced rates to any place at a time when and under circumstances under which an admission charge is made to other persons, an equivalent tax shall be collected based on the price so charged to such other persons for the same or similar accommodations, to be paid by the person so admitted. Amounts paid for admission by season ticket or subscription shall be exempt only if the amount which would be charged to the holder or subscribed for a single admission is less than 41 cents;"

* * * * *

(c) Section 500 of the Revenue Act of 1926, as amended, is amended by adding at the end thereof the following subdivision:

"(e) The exemption from tax provided by subdivision (b) (1) (A) shall not be allowed in the case of admissions to wrestling matches, prize fights, or boxing, sparring, or other pugilistic matches or exhibitions. The exemption from tax provided by subdivision (b) (1) shall not be allowed in the case of admissions to any athletic game or exhibition the proceeds of which inure wholly or partly to the benefit of any college or university (including any academy of the military or naval forces of the United States)."

* * * * *

(U. S. C., Title 26, Secs. 940, 941.)

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 07. ENFORCEMENT OF LIABILITY FOR TAXES COLLECTED.

Whenever any person is required to collect or withhold any internal-revenue tax from any other person and to pay such tax over to the United States, the amount of tax so

collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose. (U. S. C., Title 26, Sec. 1551.)

Revised Statutes:

SEC. 3187 (as amended by Sec. 1016 of the Revenue Act of 1924, c. 234, 43 Stat. 343). If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with five per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (U. S. C., Title 26, Secs. 1580.)

SEC. 3224. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. (U. S. C., Title 26, Sec. 1543.)

Judicial Code:

SEC. 267. Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law. (U. S. C., Title 28, Sec. 384.)

U. S. Code, Title 28, sec. 780, Act of February 13, 1925, c. 229 ,43 Stat. 936, 941:

SEC. 11. ACTION IF FEDERAL, ETC., OFFICER DIES WHILE SUIT PENDING.

(a) That where, during the pendency of an action, suit, or other proceeding brought by or against an officer of the United States, or of the District of Columbia, or the Canal Zone, or of a Territory or an insular possession of the United States, or of a county, city, or other governmental agency of such Territory or insular possession, and relating to the present or future discharge of his official duties, such officer dies, resigns, or otherwise ceases to hold such office, it shall be competent for the court wherein the action, suit, or proceeding is pending, whether the court be one of first instance or an appellate tribunal, to permit the cause to be continued and maintained by or against the successor in office of such officer, if within six months after his death or separation from the office it be satisfactorily shown to the court that there is a substantial need for so continuing and maintaining the cause and obtaining an adjudication of the questions involved.

(b) Similar proceedings may be had and taken where an action, suit, or proceeding brought by or against an officer of a State, or of a county, city, or other governmental agency of a State, is pending in a court of the United States at the time of the officer's death or separation from the office.

(c) Before a substitution under this section is made, the party or officer to be affected, unless expressly consenting thereto, must be given reasonable notice of the application therefor and accorded an opportunity to present any objection which he may have.

U. S. GOVERNMENT PRINTING OFFICE: 1936